

ADMITTED IN:
CALIFORNIA
TEXAS

LAW OFFICES OF
JEFFORY J. SCHARFF
WELLS FARGO CENTER
400 CAPITOL MALL, SUITE 1100
SACRAMENTO, CALIFORNIA 95814
jjslaw@scharff.us

TELEPHONE
(916) 558-6138
FACSIMILE
(916) 443-8866

February 22, 2005

Via E-mail

Thomas R. Pinkos, Executive Officer
Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Re: Florin-Perkins Landfill, Inc., 4201 Florin-Perkins Road, Sacramento, CA
Jackson Road Landfill, 8597 Jackson Road, Sacramento, CA

Dear Mr. Pinkos:

This office represents the owners of the real property on which the operations of the Florin-Perkins and Jackson Road landfills were conducted by Florin-Perkins Landfill, Inc. I am writing in response to your letter of February 4, 2005, regarding the proposed imposition of a \$50,000 Administrative Civil Liability against both Florin-Perkins Landfill, Inc. and the property owners. For the reasons more fully set forth below, it is appropriate that such a penalty be imposed in its entirety and solely against Florin-Perkins Landfill, Inc. It is also equally appropriate that no penalty be imposed against the property owners. In fact, it is my belief that the owners should be commended and thanked for their efforts in bringing this rogue and potentially criminal enterprise to a halt.

The principals of Florin-Perkins Landfill, Inc. include Iva Whitmire, who is the president of the corporation, and Ken Whitmire, who is the admitted operator/manager. This includes management/operation of the Jackson Road Landfill, which is the subject of this correspondence, but also the adjacent Florin-Perkins Landfill facility.

Florin-Perkins Landfill, Inc. was to conduct its operations pursuant to an Agreement for Operation of Landfill ("Agreement")¹ that was executed in April of 1993. Under the express terms and provisions of that Agreement, Florin-Perkins Landfill, Inc. was granted an exclusive right for landfill operation (p. 5, § 1, ¶ 1). The Agreement specifies that the operator will in its sole discretion and at its sole cost and expense, manage and operate the landfill without direction or control by the

¹Pertinent portions of the Agreement, as referenced, are attached hereto and incorporated herein.

Thomas R. Pinkos, Executive Officer
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owners (p. 5, § 1, ¶ 1). Therefore, all activities associated with Florin-Perkins Landfill, Inc. were, by contract, expressly required to be performed by the operator and not the owners.

The Agreement also requires that those operations were to be conducted in accordance with legal requirements that included the original Waste Discharge Requirements Orders No. 89-201 and 89-202. Moreover, the operator was required at its sole cost and expense to implement groundwater monitoring plans in accordance with the aforementioned orders (p. 6, § 1, ¶ 3a). The Agreement goes on to state that the operator shall observe and comply with and fully perform all of the terms and provisions of all of the legal requirements that were then in existence or which were to be subsequently modified or enacted which in any way affect or relate to or are applicable to the use (which is exclusive), occupancy and operations (which are in the sole control of the operator) or activities in or on the property (p. 6, § 1, ¶ 3(d)).

As you will both no doubt agree, despite these express contractual requirements, the same have not been fulfilled, as evidenced by the enforcement efforts of the Regional Water Quality Control Board, among other agencies, against this operation.

As a result of the sole and exclusive right under the terms and conditions of the Agreement, the owners lacked access to the property to conduct compliance activities and could only demand that the same be undertaken by the operator in accordance with the terms and conditions of the Agreement. Any direct efforts by the owners to conduct such closure activities would have no doubt resulted in the initiation of legal proceedings against the owners for tortious interference and breach of contract. In fact, Florin-Perkins Landfill, Inc. has a demonstrated pattern and practice of initiating such counter-suit tactics as evidenced by the suit Florin-Perkins Landfill, Inc. filed against the City of Sacramento after the City of Sacramento Fire Department shut Florin-Perkins Landfill, Inc. down due to its seven-year failure to install a fire suppression system. In the midst of complying with the Fire Department's directives, Florin-Perkins Landfill, Inc. sued the City alleging violation of its civil rights which culminated in a settlement whereby the City of Sacramento paid Florin-Perkins Landfill, Inc. \$375,000 to settle the dispute. It is against that backdrop that the owners were understandably wary and cautious.

However, once it became apparent that Florin-Perkins Landfill, Inc. had no intention of complying, among the steps that were taken by the land owners, were their entreaties to all of the oversight enforcement agencies, including, but not limited to, the Regional Water Quality Control Board for assistance in securing the compliance of the operator. This included providing information to Regional Water Quality Control Board staff as to the conduct of Florin-Perkins Landfill, Inc. which has been utilized in its enforcement documents including the cease and desist order. As you will recall at the October 16, 2004 hearing, the owners were fully supportive of the issuance of the cease and desist order and, in fact, testified in support of its issuance in what has now proven to be a desperate, last-ditch, failed effort that Florin-Perkins Landfill, Inc. would somehow conduct its operations in accordance with applicable law and regulation. Obviously, the same has not occurred.

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In addition, literally dozens of letters demanding the operator's compliance were sent to Florin-Perkins Landfill, Inc. or its legal counsel, by or on behalf of Nancy C. Cleavinger, who retired from a 33-year career as a school teacher and who is responsible for oversight of the property management on behalf of the family. After it became apparent that Florin-Perkins Landfill, Inc. had no intention of satisfying the repeated demands of the owners for compliance with the directives of not only the Regional Water Quality Control Board, but the Sacramento County Environmental Management Department Local Enforcement Agency, the Integrated Waste Management Board and the City of Sacramento, eviction proceedings were commenced in August 2004. Counsel was retained with specific expertise not only in eviction law, but also bankruptcy law, in the event that Florin-Perkins Landfill, Inc. sought refuge in the bankruptcy court system.

Under the terms of the Agreement, an almost 60-day process ensued from the time the initial notice of termination were issued in late May and early June of 2004 until the lawsuit itself was filed. Those proceedings culminated successfully in a stipulated, non-appealable judgment whereby Florin-Perkins Landfill, Inc. was obligated to surrender possession of the premises on February 9, 2004, at 6:00 p.m. A copy of that stipulated judgment and stipulation are enclosed for your information and review. It was solely through the efforts of the owners that Florin-Perkins Landfill, Inc.'s possessory interest has been terminated and, as set forth at the outset of this correspondence, they should be commended, not penalized, for their bravery and willingness to undertake these efforts to expedite the cessation of what has proven to be a demonstrated pattern and practice of non-compliance with law and regulation.

During the course of the eviction proceedings, Mrs. Cleavinger was in constant daily oversight to monitor the activities of Florin-Perkins Landfill, Inc. at the Florin-Perkins Landfill facility. This included multiple daily inspections. During the course of these inspections, she was routinely followed and photographed and as matters escalated, began to fear for her personal safety when Mr. Whitnire's associates would not only follow her closely, but approach her in their vehicles at a high rate of speed causing her to fear she would be involved in an automobile accident. These efforts of intimidation culminated in ride-along with law enforcement personnel who advised Florin-Perkins Landfill, Inc. staff that such conduct would not be tolerated and would result in criminal prosecution. In addition, also during the pendency of the eviction proceedings, information was developed that Mr. Whitnire intended to destroy the premises prior to vacating the same. As a result, a restraining order was issued enjoining Florin-Perkins Landfill, Inc. from any conduct that would cause destruction to the premises. A copy of that injunction and restraining order is enclosed for your information.

The owners have also been and exposed to the potential adverse consequences and repercussions of cooperating with the ongoing criminal investigation against Florin-Perkins Landfill, Inc. This has included active assistance with your staff, DTSC investigators, as well as Sacramento County EMD. To penalize the owners under the circumstances would be a grave injustice as they are themselves

Thomas R. Pinkos, Executive Officer
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also innocent bystanders and victims of the criminal conduct of Florin-Perkins Landfill, Inc. and its principals.

The owners are fully committed to commencing compliance activities with the Regional Water Quality Control Board directives and, in fact, met with your staff on February 7, 2005, as noted above, to commence those steps. The owners are committed to satisfying the Regional Water Quality Control Board's directives for compliance in the aftermath of the rogue conduct of Florin-Perkins Landfill, Inc. In fact, several meetings have been held with your staff to discuss the outstanding violations and steps to be taken to address them. The owners have secured the necessary concurrence from not only your staff, but the Integrated Waste Management Board, Sacramento County Environmental Management Department Local Enforcement Agency and the City of Sacramento with regard to its permit entitlements and rights to conduct compliance activities in satisfaction of the Regional Water Quality Control Board's directives. Efforts are presently underway to commence closure of the Jackson Road Landfill, install the necessary monitoring wells and conduct further closure activities.

The property is in the third generation of ownership. It has been and remains the intent of the owners to see this property brought into productive use by completion of landfill operations.

The owners are attempting to "dual-track" closure and operation activities for the facility. Negotiations are underway with third party contract operators to staff the facility on an interim basis while a long term agreement is negotiated with credible, reputable, responsible and reliable landfill operators.

As part of the considerations by the Regional Water Quality Control Board for the imposition of penalties is the question of economic benefit or savings achieved from operations that fail to comply with Regional Water Quality Control Board directives. There can be no doubt that the operator, Florin-Perkins Landfill, Inc., has received an economic benefit from its improper operation of the landfills, not the least of which is not having to pay for engaging the necessary professionals for and hard costs of installation of LFG monitoring wells and preparation and submittal of a revised FCP. Although these costs of unknown magnitude were a contractual obligation of Florin-Perkins Landfill, Inc., they must now be borne by the property owners.

In addition to the above costs, the owners must bear the cost of "clean up" of the site and disposal of the unacceptable material and waste that was intentionally brought into the landfill by Florin-Perkins Landfill, Inc. It is apparent that the operator was primarily concerned with the generation of revenue, not whether the materials that were received were an acceptable waste. The owners will also have to make arrangements for removal and disposal of everything that the operator did not take with it.

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Furthermore, since June of 2004 when the eviction process began, the owners have not received any compensation from Florin-Perkins Landfill, Inc. either in the form of rents, royalties, tipping fees or other landfill revenues. Instead, they have laid out in excess of \$370,000 for attorneys' fees, consultants' fees and investigative fees associated with the prosecution of the eviction proceedings. Also, in addition to sums due after June 2004, the property owners are owed millions in royalties, tipping fees and other landfill revenues, and security deposits specified within the Agreement that have not been paid for an extended period of time. The exact amount will remain to be ascertained as the operator has also failed to provide any of its financial records as specified under the terms of the Agreement.

In any proceeding with regard to the imposition of these penalties, all of the foregoing are factors which can be considered as to the imposition of any administrative civil liability against the property owners. The Water Code has sufficient flexibility to utilize the foregoing considerations as a grounds and basis for imposing any penalty solely and exclusively against the operator.

Mrs. Cleavinger has also prepared a written response to your February 4, 2005 letter. We are enclosing a copy, the contents of which are incorporated herein by reference, for your information and review.

I would, as noted in discussions with your staff, request a meeting with you and the Board's legal counsel that myself and Mrs. Cleavinger, as the property owner representative, would attend to further discuss these matters. Thank you for your consideration of the foregoing.

I look forward to speaking with you soon.

Sincerely,

/s/ Jeffory J. Scharff

Jeffory J. Scharff

JJS/hv

cc: Nancy C. Cleavinger (w/encls)
Frances McChesney, Esq. (w/encls)
Wendy Wyels, Environmental Program Manager I (w/encls)
Steven Rosenbaum, Senior Engineering Geologist (w/encls)
John Moody, WRC Engineer (w/encls)
Nancy Hotchkiss, Esq. (w/encls)

AGREEMENT FOR OPERATION OF LANDFILL

This Agreement made this 29th day of April, 1993, between NANCY C. CLEAVINGER, AUDREY A. HUNT, JANET E. HARVEY, SALLY R. DAVIS, AUDREY A. HUNT and NANCY C. CLEAVINGER, TRUSTEES under a Testamentary Trust created by a will dated July 11, 1984, pursuant to a court order filed May 20, 1991, VIRGINIA A. PALMER, GAIL C. BROWN, NANCY C. CLEAVINGER and AUDRY A. HUNT, Trustees to the NC CLEAVINGER FAMILY TRUST, AUDRY A. HUNT and NANCY C. CLEAVINGER, Trustees to the AA HUNT FAMILY TRUST, JANET E. HARVEY and NANCY C. CLEAVINGER, Trustees to the JE HARVEY FAMILY TRUST, VIRGINIA A. PALMER and GAIL C. BROWN, Trustees to the VA PALMER FAMILY TRUST, and GAIL C. BROWN and DONALD B. BROWN, Trustees to the GC BROWN FAMILY TRUST, hereinafter collectively referred to as Owner, and FLORIN-PERKINS LANDFILL, INC., a California corporation, hereinafter referred to as Operator; and

Whereas, Owner is the Owner of real property located in the County of Sacramento, State of California, containing approximately twenty-four (24) acres, more or less, and located in Section 13, T8N, R5E, MDB&M, and being more particularly described as APN 78-201-07, and outlined in red on map marked Exhibit "A" and attached hereto and incorporated herein by this reference and hereinafter referred to as the Jackson Road Landfill; and

Whereas, Owner is also the owner of the real property located in the County of Sacramento, State of California, containing approximately one hundred seventy eight (178) acres,

more or less, and located in Sections 13 and 24, T8N, R5E, MDB&M, including all or portions of Assessor Parcel Numbers 061-0150-34, 42, 45, 48, 49, 078-0202-05, 06, on the Sacramento County Assessor Parcel map as outlined in red and marked Exhibit "B" and attached hereto and incorporated herein by this reference and hereinafter referred to as the Florin-Perkins Landfill;

Whereas Owner has obtained from the City of Sacramento a Special Permit No. P-7573, Dated 1/13/77, for the Jackson Road Landfill and attached hereto and incorporated herein by reference as Exhibit "C" to operate a Class III waste disposal, land reclamation and landfill as defined in Title 23 of the California Code of Regulations Section 2533, in and on the property as described therein, and

Whereas, Owner has obtained from the City of Sacramento as Special Permit No. P-8940, dated June 26, 1980, for the Florin-Perkins Landfill and attached hereto and incorporated herein by reference as Exhibit "D" to operate a Class III waste disposal, land reclamation and landfill as defined in Title 23 of the California Code of Regulation Section 2533 in and on the property as described in Exhibit B; and

Whereas, both Landfills are currently rated as unclassified and therefore cannot receive items otherwise disposable in a Class III waste disposal, land reclamation and landfill; and

Whereas, the property described in Exhibit B has been further mined subsequent to the approval of the City of Sacramento Special Permit Number P-8940 the total acreage which is eligible for waste disposal, land reclamation and landfill is now approximately 124 acres as set forth and described with more specifically in Exhibit "E", a copy of which is attached hereto and incorporated herein by reference; and

Whereas, Owner has additional portions of land which have been mined although none

of these portions are legally eligible for landfilling as these portions of land lack approval from the necessary authorities including but not limited to the City of Sacramento, County of Sacramento, California Regional Water Quality Control Board, California Integrated Waste Management Board, among others that is further described as Sections 13 and 24, T8N, R5E, MDB&M, and includes all or a portion of Sacramento County Assessor's Parcel Numbers 078-0202-002, 003, 006, 014, 016; 061-0150-054, 055, 056, 057, 058, as further described in Exhibit "F," a copy of which is attached hereto and incorporated herein by reference; and

Whereas, portions of the Jackson Road Landfill are presently subject to an operating agreement dated June 16, 1977 and as subsequently amended on August 1, 1978, hereinafter collectively referred to as the Hulsey Agreement, copies of which is incorporated herein by reference as Exhibit "G" and

Whereas, the Jackson Road Landfill is further subject to the provisions of the California Regional Water Quality Control Board-Central Valley Region Waste Discharge Requirements for Chet Hulsey, Robert E. Davis, Audrey A. Hunt, Nancy C. Cleavinger, Janet E. Harvey, Virginia A. Palmer, and Gail C. Brown for Closure of Jackson Road Landfill, Unclassified Landfill, Sacramento County as Order No. 89-201, hereinafter Order No. 89-201, a copy of which is attached hereto and incorporated herein by reference as Exhibit "H"; and

Whereas, the Florin-Perkins Landfill is subject to the provisions of the California Regional Water Quality Control Board-Central Valley Region Waste Discharge Requirements for Chet Hulsey, Robert E. Davis, Audrey A. Hunt, Nancy C. Cleavinger, Janet E. Harvey, Virginia A. Palmer, and Gail C. Brown for Closure of the Florin-Perkins Landfill, Unclassified Landfill, Sacramento County Order No. 89-202, hereinafter Order No. 89-202, a copy of which

is attached hereto and incorporated herein by reference as Exhibit "I"; and

Whereas, the parties wish to enter into an agreement under which Operator will agree to operate and be fully responsible for all phases of such Landfill Operation, on the terms and conditions hereinafter set forth:

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

As used throughout this Agreement, the following terms shall mean:

- a) Effective Date of the Agreement shall be the date upon which the Agreement is executed by all parties.
- b) Landfill Revenues includes all revenues derived from all activities on or related to the Owner's Property by Operator, the Landfill and related operations from all sources, both on-site and off-site, including, but not limited to, tipping fees for all materials received, landfilling, composting, recycling, dirt sales, dirt storage, materials reclaimed or made from fill, or otherwise derived from the through-put of the Landfill and includes all payments and compensation in cash or other consideration received for which Operator is entitled to receive, including but not limited to labor, services, materials or supplies received or to be received, by Operator or individuals under Operator's direction or control, or from any person or concern delivering material to the Landfill Operations whether paid at the time of dumping or payable at a future date.
- c) Legal Requirements affecting the Landfill Operation shall include but not be limited to the Constitution, Laws, Statutes, Regulations, Guidelines, Policies, Ordinances, Codes, Rules or other requirements of the U.S. Government, State of California, County of Sacramento, City of Sacramento or any political, administrative, or ministerial subdivision of

any of the foregoing as well as permits, orders, notices, agreements, stipulations, authorizations or entitlements now in existence or as subsequently modified, amended, superseded or enacted. Legal Requirements specifically includes all environmental laws including but not limited to the Resource Conservation and Recovery Act of 1976 ("RCRA"), The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Clean Water Act, The Clean Air Act, The Safe Drinking Water Act, The Toxic Substances Control Act, The Atomic Energy Act of 1954, The Porter-Cologne Water Quality Control Act, The California Waste Management Act, and amendments thereto, and any other comparable state or local laws, or any rules or regulations promulgated under any of the foregoing.

d) Property shall include those portions of the Jackson Road Landfill as described in Exhibit "C", the Florin-Perkins Landfill as described in Exhibit "D". The Property does not presently encompass those additional portions of land adjacent to and contiguous with the Florin-Perkins Landfill that are presently mined and but not authorized for Landfill Operations as described in Exhibit "F".

I.

LANDFILL MANAGEMENT AND OPERATION

1. Exclusive Right for Landfill Operation.

Owner hereby grants to Operator an exclusive right to conduct a Landfill Operation, as provided herein. Operator will, in its sole discretion and at its sole cost and expense, manage and operate the Landfill, establish all disposal fees, deductions, discounts, credits or allowances at the Landfill and furnish all labor, equipment, machinery and maintenance necessary to operate the Landfill in its own manner and method, and without direction or control by Owner, except

as provided in this Agreement. Operator will operate the Landfill in accordance with applicable Legal Requirements and environmental laws and all other current or subsequently enacted and applicable federal, state, regional, county, city, and local laws, or regulations, ordinances, and rules.

2. Commencement of Operations

Operator shall commence Landfill Operation when all governmental permits, licenses or authorizations are received by Owner or Operator, but in no event more than thirty (30) days after the signing of this Agreement. The parties agree that if the commencement of the Landfill Operation is delayed because of the failure to receive any required governmental permit, license or authorization, and reasonable efforts are being made to promptly and diligently obtain such governmental permit, license or authority, then the parties will extend the time for commencement of said Landfill Operation, for an additional reasonable time. As specified above, Owners expressly reserve the right to terminate this agreement at their sole and exclusive discretion in the event that Operator fails to commence operations within 60 days of execution of this Agreement.

3. Operation in Accordance with Legal Requirements

Operator hereby agrees to conduct its Landfill Operation in and on the Property described, in accordance with and subject to all of the following terms and conditions and as otherwise set forth in this Agreement:

- a) The provisions of Order Nos. 89-201 and 89-202. Additionally, Operator shall implement, at its sole cost and expense, the groundwater monitoring plan in accordance

with the provisions of Order Nos. 89-201 and Order 89-202.

b) The provisions of Permit Nos. P-7573 and P-8940 issued to Owner, by the City of Sacramento.

c) The conditions and requirements specified by other governmental bodies, agencies or departments charged with or responsible for any phase of such Landfill Operation, and in accordance with Legal Requirements relating or applying to such Landfill Operations that are now in existence or as may be subsequently modified, amended, or enacted.

d) Operator shall observe and comply with and perform fully, all of the terms and provisions of all other Legal Requirements that are now in existence or which are subsequently modified or enacted which in any way affect or relate to or are applicable to the use, occupancy, operations or activities in or on the Property for the purposes herein set forth.

4. Acceptable Materials

The Property herein described shall generally be used for a Class III landfill, as defined in 23 CCR § 2533, receiving inert waste, as defined in 23 CCR § 2524, and for no other purpose or use. As a further limitation, in accordance with the terms and conditions of Permit Nos. P-7573 and P-8940, Operator shall only allow and permit the dumping of:

a) Dirt, sand, gravel, rocks and like material, not containing caustic or other harmful chemicals or materials.

b) Demolition and other construction materials provided however that such materials shall not contain significant quantities of decomposable wastes (such as lumber or wood products, paper, plastic, trees, shrubs or garden trimmings).

c) Concrete and asphalt rubble.

5970 1st Avenue
Sacramento, Calif.
February 22, 2005

Thomas Pinkos
Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Re: Florin-Perkins Landfill, Inc.
Fine to owners of property

Dear Mr. Pinkos:

This letter is written to you in connection with our efforts to settle the Administrative Civil Liability penalty.

As soon as we were able to gain possession of our property through court action, we (the property owners and our attorney, Mr. Jeffery Scharff,) requested a meeting with Mr. Rosenbaum and Mr. Moody to learn what they determined to be the first priority in dealing with the non compliance with the directives of the California Regional Water Control Board by Florin-Perkins Landfill, Inc., and at the close of the meeting, I was dismayed to be told by Mr. Rosenbaum that we, the owners of the property, who had no possessory rights to the property during the period of the operation of Jackson Road and Florin-Perkins Landfills by Florin-Perkins Landfill, Inc., were being fined FIFTY THOUSAND DOLLARS (\$50,000.) because of the operator, Ken and Iva Whitmire's non-compliance of the orders of the California Regional Water Control Board. The formal notification of such came to me by Certified mail two days after our meeting. Needless to say, I was disheartened and in despair.

Of Ken Whitmire, and also Iva Whitmire, I have requested, admonished, begged, demanded, both in writing and verbally, that they comply with the directives of the Regional Water Board, all to no avail. I have taken pictures of Mr. Whitmire's activities which I have shared with Mr. Rosenbaum and Mr. Moody and have tried to the best of my ability to keep them informed of Mr. Whitmire's activities. When I would read a statement in an inspection report that Mr. Whitmire had made to Mr. Moody that was entirely untrue, I would inform Mr. Moody of such. I have written countless letters; many of which I shall attach for your ready reference. Our attorney has also written numerous letters; also to

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no avail. It is inconceivable to me that Mr. Whitmire continually defied authority and regulatory orders, but he did. It appears to me that he must think that he is "above the law." That is certainly not the type of person that we would want to entrust our property to for the operation of landfills.

In a letter to me dated February 6, 2004, relative to my written correspondence to the various regulatory agencies, I am admonished by one of Mr. Whitmire's attorneys, Louis A. Gonzalez, Jr., of the law firm of Weintraub Genshlea Chediak Sproul, that my written correspondence to the various regulatory agencies will cause a shut-down of the operation, "whether by design or not, in an effort for the owners to avoid potential liability." My reply to Mr. Gonzalez, in a letter dated February 19, 2004, was... "As for your comment about my written correspondence to various regulatory agencies, all your client needs to do is to comply with the directives and Notice of Orders of the regulatory agencies and then no correspondence on my part would be necessary. Mr. Whitmire's actions create great liability for us."

Mr. Whitmire informed his staff that I was to have no information about the operation of the landfill, or any reports, or any test results.

I have been harassed, followed, photographed, intimidated but still I had to be around to try and see what was going on, and despite Mr. Whitmire's order that employees not speak to me, I did call them on the cell to report matters of violations and request that they be corrected immediately.

I have tried every way that I know of to get Mr. Whitmire to comply with the orders of the California Regional Water Quality Control Board and other regulatory agencies. He would even tell me in some instances that he was going to comply, but he did not. He had stated that it was too much money to close the Jackson Road landfill. I finally had to face the fact that he had no intention of complying.

I knew that evicting Florin-Perkins Landfill, Inc. (Kenneth R. and Iva Whitmire) would not be an easy task. I knew of the tactics of his attorneys and also, we first needed to have evidence documented. I could give you a lengthy account of the manipulative and delay measures that he had his attorneys try, and he was successful in remaining in possession far longer than we had hoped through his attorneys' efforts. It has been a lengthy and extremely expensive task, but at last, he is off of the property... not gone, of course, but at least off of our property, and we can now obtain a competent operator who will do things right and operate the landfills in the manner required by the regulatory agencies.

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February 22, 2005

I would respectfully request that you hold the operator, Kenneth R. Whitmire and Iva Whitmire (Florin-Perkins Landfill, Inc.) solely responsible and financially accountable and impose the fine in its entirety on Florin-Perkins Landfill, Inc. for their actions in blatantly refusing to comply with California Water Quality Control Board directives and orders. Ken Whitmore is not a corporate officer, but he is indeed the operator and decision maker of the Florin-Perkins Landfill, Inc.

I would like very much to have the opportunity to meet with you and discuss the matter with you and answer any questions that you may have and perhaps help you understand and realize that we are indeed victims of a calculating and an unscrupulous operator, and we had no ability to comply with the orders of the California Regional Water Board when Florin-Perkins, Inc. held the possessory rights of our property, and the operator had an exclusive right for the operation of the landfill, and in its sole discretion and at its sole cost and expense, managed and operated the landfill without direction or control by the owners.

I am enclosing for your ready reference some of the letters which are representative of letters sent to Florin-Perkins Landfill, Inc. and their attorney(s) and others relative to compliance of regulatory directives and orders.

Thank you for your assistance in this regard.

Sincerely yours,

Nancy C. Cleavinger

Nancy C. Cleavinger

NCC
Enclosures

cc: Jeffory J. Scharff, Esq.

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March 31, 2005

Steve Rosenbaum
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

400 Capitol Mall, Eleventh Floor
Sacramento, CA 95814
916.558.6000 : 916.446.1611 FAX
www.weintraub.com

THE MERITAS LAW FIRM WORLDWIDE

Louis A. Gonzalez, Jr.
916.558.6105 DIRECT
lgonzalez@weintraub.com

RESPONSE TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0503, FLORIN PERKINS LANDFILL, SACRAMENTO COUNTY

Dear Mr. Rosenbaum:

This response letter is submitted on behalf of Florin Perkins Landfill, Inc., former operator of Florin Perkins Landfill, in reply to the Regional Water Quality Control Board's Administrative Civil Liability ("ACL") Complaint No. R5-2005-0503 issued to Florin Perkins Landfill for purported violations of a California Water Code Section 13267 Order. Florin Perkins hereby requests that a hearing be conducted as to the purported issues, findings, violations and determinations of liability set forth therein as permitted by statute. Florin Perkins Landfill, Inc. hereby waives its right to an expedited hearing within 90 days pursuant to Water Code Section 13323 due to the lack of exigency created by the January 2005 closure of Florin Perkins Landfill and to allow the Executive Officer's re-evaluation and re-issuance of a determination as to the issues discussed herein. Florin Perkins Landfill, Inc. additionally requests that the Board refer these matters to mediation pursuant to the provisions outlined in 23 CCR 648.6.

This response letter is additionally submitted for the purpose of providing further information for the Board to re-evaluate its mistaken determination that "site operations were ... under the exclusive control of Florin Perkins Landfill, Inc. as operator" and that the owner of the property was unable to exercise dominion and control over the subject property. Prior to this recent determination, the Executive Officer concluded in the February 4, 2005 ACL that property owner (Nancy Cleavinger, Trustee et al) and operator (Florin Perkins Landfill, Inc.) both be held liable for the issues set forth therein. After examining the Property Owner's submittal, which was not been provided to Florin Perkins Landfill, Inc., the Executive Officer reissued the ACL as to Florin Perkins Landfill on March 3, 2005 purporting that operator Florin Perkins Landfill, Inc. was solely liable concluding that Florin Perkins alone exercised exclusive control over the subject property. Because we have not been provided a copy of the Owner's submittal, we can only speculate as to content and comments made by this party. Therefore, we would appreciate being provided a copy so that we may be able to address the information presented to you. As set forth in further detail below, the actual dominion and control exercised over Florin Perkins Landfill by the property owner does not justify this conclusion.

It is disingenuous for the Property Owner (Nancy Cleavinger, Trustee et al) to attempt to disclaim responsibility for actions occurring on the subject property because Property Owner actually exercised considerable discretion over the activities occurring on site. An examination of the parties' license agreement and Property Owner's conduct on site and with the Operator belies the Property Owner's attempts to insulate itself from responsibility. First, the license agreement between Property Owner and the Operator does not specify, as most leases do, that Operator in fact is given exclusive possession and control of the property to all others. Instead this agreement makes clear that Operator's possessory rights are subservient to that of the Property Owner. For instance, the agreement provides that "Owner and Owner's authorized agents may enter the Property at all reasonable times to inspect the property and the Landfill Operations or to post notices or signs" and further that operator was provided with the "nonexclusive easement for ingress or egress to and from the Property, over the roadway located on the property of the Owner". The Owner regularly exercised its right to enter and inspect the landfill since the inception of their agreement without providing Florin Perkins Landfill notice or obtaining permission from the facility before entering and inspecting the premises. While the agreement provided Operator with the authority to conduct the landfill operations on the Owners' property, the authority to operate was markedly curtailed by the Property Owner's directives, inspection rights and legal limitations placed on the operations by the Property Owner through its ability to oversee and direct permitting, management and planning of the landfill as permitted in sections I.1 through I.10 of the parties' agreement.

On first blush, the language of the parties' Operating Agreement may lend support to the conclusion that Operator was entitled to exclusive control over the operations of the landfill. In practice, however, the course of conduct of the parties is at odds with this conclusion. Testimony and evidence can be offered to further substantiate the Property Owner's extent of control over the subject that routinely occurred on a day-to-day basis if requested by the Executive Officer or the Board. For instance, several times each day, Nancy Cleavinger would arrive unannounced onsite at the landfill to inspect operations. Typically these inspections would result in her providing direction and instructions to Florin Perkins Landfill, Inc.'s employees and managers as to actions they were permitted to take and actions that she would not permit. Should Florin Perkins fail to adhere to Ms. Cleavinger's instructions, the Owners' attorney would then be directed to promptly prepare correspondence to the Operator and/or Operator's attorney demanding compliance with Ms. Cleavinger's instructions. Moreover, Ms. Cleavinger and her attorney have additionally threatened civil action and the Operator's eviction from the premises for the Operator's failure to adopt or adhere to operational requirements she set forth. On numerous occasions, Florin Perkins Landfill, Inc. implemented Ms. Cleavinger's operational, managerial and permitting requirements in direct response to these threats issued from her and her attorney. If the Operator failed to implement these demands, however, Ms. Cleavinger would often instruct others, including regulators, to carry out her wishes on her property, for instance, by taking and analyzing her own soil and waste samples. Thus, it is disingenuous for the Property Owner to contend that all operations were directed and controlled by Florin Perkins Landfill, Inc.

For these reasons and given the Owner's conduct, we believe the Executive Officer was mistaken to rely on the language of the Operating Agreement and to conclude that Florin Perkins Landfill, Inc. possessed and exercised "exclusive control" over operations based on the limited and partial information provided to him by the Property Owners. Although it is likely that the Property Owner's submitted a substantial number of letters and documents for inclusion in staff's Florin Perkins Landfill file, until today, the Operator has never been formally required to refute the Owner's allegations. Because we have not been provided a copy of the Owner's allegations, we can only speculate as to content and comments made by this party. Therefore, we would appreciate being provided a copy so that we may be able to address the information presented to you.

Operator additionally notes that the Regional Board has requested comments from other persons who have an interest in this matter that are not due until next week. We would appreciate copies of all comments received in this regard, as we believe these "interest parties" may suffer from the same misperception of the Operator that is being perpetuated by the Property Owner. In addition, in preparation for the mediation and/or hearing previously requested, Operator would appreciate copies of all documents and correspondence from the Board as well as those submitted by third-parties, such as the Owner, that substantiate or tend to substantiate the Executive Officer's allegations in the ACL.

Should the Executive Officer or Board have any additional questions on the matters set forth herein or request further documentation to support these matters, please so advise and Operator will respond as requested.

Very truly yours,

weintraub genshlea chediak sproul
a law corporation



Louis A. Gonzalez, Jr.

LAG/tlo

cc: Thomas Pinkos
Florin Perkins Landfill, Inc.

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March 31, 2005

Steve Rosenbaum
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

400 Capitol Mall, Eleventh Floor
Sacramento, CA 95814
916.558.6000 : 916.446.1611 FAX
: www.weintraub.com

THE MERITAS LAW FIRMS WORLDWIDE

Louis A. Gonzalez, Jr.
916.558.6105 DIRECT
lgonzalez@weintraub.com

RESPONSE TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0502,
JACKSON ROAD LANDFILL, SACRAMENTO COUNTY

Dear Mr. Rosenbaum:

This response letter is submitted on behalf of Florin Perkins Landfill, Inc., former operator of Florin Perkins Landfill, in reply to the Regional Water Quality Control Board's Administrative Civil Liability ("ACL") Complaint No. R5-2005-0502 issued to Jackson Road Landfill for purported violations of Cease and Desist Order No. R5-2004-0138. Florin Perkins hereby requests that a hearing be conducted as to the purported issues, findings, violations and determinations of liability set forth therein as permitted by statute. Florin Perkins Landfill, Inc. hereby waives its right to an expedited hearing within 90 days pursuant to Water Code Section 13323 to allow the Executive Officer's re-evaluation and re-issuance of a determination as to the issues discussed herein. Florin Perkins Landfill, Inc. additionally requests that the Board refer these matters to mediation pursuant to the provisions outlined in 23 CCR 648.6.

This response letter is additionally submitted for the purpose of providing further information for the Board to re-evaluate its mistaken determination that "site operations were ... under the exclusive control of Florin Perkins Landfill, Inc. as operator" and that the owner of the property was unable to exercise dominion and control over the subject property. Prior to this recent determination, the Executive Officer concluded in the February 4, 2005 ACL that property owner (Nancy Cleavinger, Trustee et al) and operator (Florin Perkins Landfill, Inc.) both be held liable for the issues set forth therein. After examining the Property Owner's submittal, which was not been provided to Florin Perkins Landfill, Inc., the Executive Officer reissued the ACL as to Florin Perkins Landfill on March 3, 2005 purporting that operator Florin Perkins Landfill, Inc. was solely liable concluding that Florin Perkins alone exercised exclusive control over the subject property. Because we have not been provided a copy of the Owner's submittal, we can only speculate as to content and comments made by this party.

Therefore, we would appreciate being provided a copy so that we may be able to address the information presented to you. As set forth in further detail below, the actual dominion and control exercised over Florin Perkins Landfill by the property owner does not justify this conclusion.

It is disingenuous for the Property Owner (Nancy Cleavinger, Trustee et al) to attempt to disclaim responsibility for actions occurring on the subject property because Property Owner actually exercised considerable discretion over the activities occurring on site. On first blush, the language of the parties' Operating Agreement may lend support to the conclusion that Operator exclusively controlled closure planning and requirements governing the Jackson Road Landfill. In practice, however, the course of conduct of the parties is at odds with this conclusion. Testimony and evidence can be offered to further substantiate the Property Owner's extent of control over the subject that routinely occurred on a day-to-day basis if requested by the Executive Officer or the Board. For instance, Nancy Cleavinger routinely made it a practice to inspect the property to insure that no waste disposal was occurring on site as well as to determine what additional measures were to be undertaken at that site. At no time did Ms. Cleavinger ever request permission from Florin Perkins, let alone believe permission was necessary, to perform these inspections. Moreover, Operator Florin Perkins Landfill had very little, if any, actual involvement with closure requirements for that site. The closure negotiation planning requirements with Tiechert Land Company were handled almost exclusively by the Property Owner and her attorney. In fact, the Operator's involvement in these matters related solely to funding the work being performing for the Property Owner relating to the negotiations and Water Board's closure requirements, and perhaps some of the work contemplated by the closure once negotiated. Property Owner and her attorney made it a point of demanding that the Operator could neither go to Jackson Road Landfill nor take any action relating to this site without the express permission and authority of Property Owner. Thus, it is patently untrue for the Property Owner to contend that all operations at Jackson Road Landfill were directed and controlled by Florin Perkins Landfill, Inc.

For these reasons and given the Owner's conduct, we believe the Executive Officer was mistaken to rely on the language of the Operating Agreement and to conclude that Florin Perkins Landfill, Inc. possessed and exercised "exclusive control" over operations based on the limited and partial information provided to him by the Property Owners. Although it is likely that the Property Owner's submitted a substantial number of letters and documents for inclusion in staff's Florin Perkins Landfill file, until today, the Operator has never been formally required to refute the Owner's allegations. Because we have not been provided a copy of the Owner's allegations, we can only speculate as to content and comments made by this party. Therefore, we would appreciate being provided a copy so that we may be able to address the information presented to you.

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Should the Executive Officer or Board have any additional questions on the matters set forth herein or request further documentation to support these matters, please so advise and Operator will respond as requested.

Very truly yours,


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a law corporation

Louis A. Gonzalez, Jr.

LAG/tr

cc: Thomas Pinkos
Florin Perkins Landfill, Inc.